



Sen. David S. Luechtefeld

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09800SB2312sam002

LRB098 09518 DRJ 44564 a

1 AMENDMENT TO SENATE BILL 2312

2 AMENDMENT NO. _____. Amend Senate Bill 2312, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Right to Privacy in the Workplace Act is
6 amended by changing Section 5 as follows:

7 (820 ILCS 55/5) (from Ch. 48, par. 2855)

8 Sec. 5. Discrimination for use of lawful products
9 prohibited.

10 (a) Except as otherwise specifically provided by law and
11 except as provided in subsections (b) and (c) of this Section,
12 it shall be unlawful for an employer to refuse to hire or to
13 discharge any individual, or otherwise disadvantage any
14 individual, with respect to compensation, terms, conditions or
15 privileges of employment because the individual uses lawful
16 products off the premises of the employer during nonworking

1 hours.

2 (b) (1) This Section does not apply to any employer that is
3 a non-profit organization that, as one of its primary purposes
4 or objectives, discourages the use of one or more lawful
5 products by the general public. This Section does not apply to
6 the use of those lawful products which impairs an employee's
7 ability to perform the employee's assigned duties.

8 (2) (A) This Section does not apply to any employer that, as
9 its business purpose or objective, provides medical or hospital
10 treatment to patients who have a cancerous condition, that
11 administers a saliva or urine test, or both, for tobacco use,
12 and that:

13 (i) refuses to hire any individual on or after the
14 effective date of this amendatory Act of the 98th General
15 Assembly because the individual uses a tobacco product; or

16 (ii) discharges any individual who was hired on or
17 after the effective date of this amendatory Act of the 98th
18 General Assembly because the individual uses a tobacco
19 product, or otherwise disadvantages any individual who was
20 hired on or after the effective date of this amendatory Act
21 of the 98th General Assembly with respect to compensation,
22 terms, conditions, or privileges of employment because the
23 individual uses a tobacco product.

24 (B) An employer described in this paragraph (2) may enforce
25 an action described in item (i) or (ii) of subparagraph (A) as
26 long as the action taken:

1 (i) relates to a bona fide occupational requirement and
2 is reasonably related to employment activities and
3 responsibilities of a particular employee or group of
4 employees; or

5 (ii) is necessary to avoid a conflict of interest or
6 the appearance of a conflict of interest with any
7 responsibilities owed by the employee to the employer.

8 (C) An employer described in this paragraph (2) shall:

9 (i) publish a statement notifying employees and
10 prospective employees of the employer's policy on tobacco
11 use, including, but not limited to, the employer's
12 enforcement mechanisms, the frequency of testing, and any
13 adverse actions that could be taken against an employee for
14 violations of the policy and the employee's rights to
15 appeal any adverse actions;

16 (ii) provide written notification to employees and
17 prospective employees that, as a condition of employment,
18 an employee must abide by the terms of the statement; and

19 (iii) establish a tobacco free awareness program to
20 educate employees about the employer's policy and to
21 provide tobacco cessation counseling and assistance.

22 (D) As used in this paragraph (2), "tobacco product"
23 includes cigarettes, pipes, cigars, chewing tobacco, snus,
24 snuff, clove cigarettes, electronic cigarettes, and similar
25 products.

26 (3) This Section does not apply to the use of those lawful

1 products which impairs an employee's ability to perform the
2 employee's assigned duties.

3 (c) It is not a violation of this Section for an employer
4 to offer, impose or have in effect a health, disability or life
5 insurance policy that makes distinctions between employees for
6 the type of coverage or the price of coverage based upon the
7 employees' use of lawful products provided that:

8 (1) differential premium rates charged employees
9 reflect a differential cost to the employer; and

10 (2) employers provide employees with a statement
11 delineating the differential rates used by insurance
12 carriers.

13 (Source: P.A. 87-807.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."